

**Members**

Sen. Luke Kenley, Chairman  
Sen. John Broden  
Rep. Jackie Walorski  
Rep. Ryan Dvorak  
Art Harris  
Tobias Buck  
Jeff Miller  
Mark Stuaan  
Sue Shadley  
Mayor John Zumer  
Mayor Shannon Buskirk  
Jim Flannery  
Carol McDowell  
John Land  
Gordon Durnil  
Stephen Johnson  
Tom Easterly  
Kyle Hupfer



# ENVIRONMENTAL CRIMES TASK FORCE

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**IDEM Staff**

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Authority: P.L. 63-2005 (SEA 195-2005)

## MEETING MINUTES<sup>1</sup>

**Meeting Date:** April 27, 2006  
**Meeting Time:** 10:00 a.m.  
**Meeting Place:** State House, 200 W. Washington St., Room 431  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 3

**Members Present:** Rep. Ryan Dvorak; Sen. Luke Kenley, Chairman; Art Harris; Jeff Miller; Sue Shadley; Mayor Shannon Buskirk; Jim Flannery; John Land; Gordon Durnil; Stephen Johnson; Tom Easterly; Kyle Hupfer; .

**Members Absent:** Sen. John Broden; Rep. Jackie Walorski; Mark Stuaan; Carol McDowell; Tobias Buck; Mayor John Zumer.

The meeting was called to order at 10:08 a.m. by Senator Luke Kenley, Chairman

### Introduction:

The members re-introduced themselves, described their backgrounds, and explained how they came to serve on the task force.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Senator Kenley recapped the last meeting and reminded everyone that the meetings were on a 60-day cycle and that the next meeting would be held on June 22, 2006, at 10 a.m. in Room 431. He said that he has requested that the Legislative Council authorize the Legislative Services Agency (LSA) to provide staff support. He reiterated that the committee is to submit a final report by November 1, 2007. He again stated that currently Indiana has only one sanction to deal with environmental crimes and there is no difference in degree of penalty imposed. Indiana needs more specific sanctions in order to enforce, prosecute, or fine offenders. The offense needs to be tied to the penalty.

Sen. Kenley referred to the three questions suggested by Mark Stuaan at the last meeting to help the task force organize its deliberations:

Who should have prosecuting authority?

What acts should rise to the level of a crime?

What should the penalties for those crimes be?

The chairman also drew the members' attention to a summary of selected state crimes and penalties prepared by Bob Bond and asked which state(s) should be a model for Indiana.

### **Discussion:**

#### 1) Who should have prosecuting authority?

Stephen Johnson summarized the advantages and disadvantages of the current Indiana practice of relying primarily on county prosecutors to prosecute environmental crimes. County prosecutors are familiar with local court requirements. Having a prosecutor at the state level specializing in environmental crimes might lead to a tendency to overzealous enforcement. However, it would be helpful to have authority to allow state officials provide support for county prosecutors. Also, the question of crimes with multi-county environmental impacts needs to be addressed.

Task force members also pointed out that some local prosecutors might be overzealous in prosecuting environmental crimes while others might be too lax. Several members liked the method used by Ohio where county prosecutors have jurisdiction over acts in their counties but the state environmental agency can also refer cases to the state Attorney

#### 2) What acts should rise to the level of a crime?

Sue Shadley observed that the primary impact of an environmental crime is the threat of prison; civil violations already carry the possibility of substantial fines. Therefore, only significantly harmful actions should be crimes. There is no need in Indiana to have environmental misdemeanors. She said that some acts in each media (air, water, land) should be a crime.

Jim Flannery also thought the focus should be on acts that cause significant harm to the environment or human health to deter local prosecutors from trying to make a name for themselves by going after businesses for less egregious offenses that can be punished adequately in civil court.

Rep. Ryan Dvorak said the task force needed to establish working definitions of

crimes, perhaps only felonies.

Tom Easterly approved of the federal practice of holding the top executive of a company responsible for the actions of employees and absolving lower level employees of responsibility as long as they acted with the authorization of their supervisors. He also said that there needed to be a criminal sanction for violators who ignore repeated civil judgments against them. The members discussed whether contamination of drinking water should be a crime.

Mayor Buskirk raised the problem of an individual's act that causes underground contamination but which may not cause an impact to drinking water until after the five-year statute of limitations has run. Sen. Kenley said that the Illinois code states that the time period for the statute of limitations does not begin until the contamination is discovered.

Sen. Kenley raised the question of prohibitions against companies with a history of repeated violations. Sue Shadley mentioned Indiana's good character law, which applies to solid waste companies in some permitting situations.

### 3) What should the penalties be?

The task force did not discuss appropriate penalties.

### **Conclusion:**

The task force agreed that Illinois provided a good model to focus the discussion at the next meeting. Members liked the provisions to prevent unjust enrichment. Jeff Miller cited the four levels of mental states required for crimes (*i.e.*, intentional, knowing, reckless, negligent). Shadley disagreed with Illinois' inclusion of misdemeanor crimes.

Sen. Kenley asked LSA to prepare draft language based on the Illinois statutes. The draft will be available for task force members' review and comment and before the next meeting, with revisions made for the meeting. He also asked LSA to review Indiana court cases to make sure that the draft language is consistent with judicial precedent.

The chairman asked IDEM to alert all interested parties about the decision to focus on Illinois as a model so that they may research what real-world effects the environmental crime statutes have had on similar stakeholders in Illinois. He instructed IDEM to contact the Department of Health, DNR, and the Indiana Bar Association to reach out to as many stakeholders as possible.

The next meeting will be on June 22, 2006 at the Statehouse, Room 431 at 10 a.m.

The meeting adjourned at 11:20 a.m.